

AMENDED IN ASSEMBLY JUNE 30, 2008

SENATE BILL

No. 1754

Introduced by Senator Kehoe

February 22, 2008

An act to amend Sections 26003, 26011, 26011.6 and 26022 of, *and to add Section 26001.5 to*, the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1754, as amended, Kehoe. Energy: California Alternative Energy and Advanced Transportation Financing Authority.

The California Alternative Energy and Advanced Transportation Financing Authority Act established the California Alternative Energy and Advanced Transportation Financing Authority. The authority is authorized to do all things necessary and convenient to carry out the purposes of the act. The authority is also required to establish a renewable energy program to provide financial assistance to certain specified entities to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies.

This bill would additionally authorize the authority to purchase alternative source energy or projects for sale to a specified participating party and to make a loan to a participating party to purchase alternative source energy or projects. *The bill would require the authority to ensure that a financed project is limited to resources that the authority determines support the state's goals for the reduction of emissions of greenhouse gases.* The bill would make conforming changes.

This bill would declare specified intent of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 26001.5 is added to the Public Resources*
2 *Code, to read:*

3 26001.5. *It is the intent of the Legislature, in enacting Senate*
4 *Bill 1754 of the 2008–09 Regular Session, to only provide authority*
5 *for the California Alternative Energy and Advanced Transportation*
6 *Financing Authority to use bonds to finance power purchase*
7 *agreement arrangements, and not to alter or supersede other*
8 *provisions of law addressing criteria associated with energy*
9 *generation or advanced transportation technologies, such as*
10 *direct-access, the use, size, or statewide caps, or the net-metering*
11 *or feed-in tariff provisions.*

12 ~~SECTION 1.~~

13 *SEC. 2. Section 26003 of the Public Resources Code is*
14 *amended to read:*

15 26003. As used in this division, unless the context otherwise
16 requires:

17 (a) “Authority” means the California Alternative Energy and
18 Advanced Transportation Financing Authority established pursuant
19 to Section 26004, and any board, commission, department, or
20 officer succeeding to the functions of the authority, or to which
21 the powers conferred upon the authority by this division shall be
22 given.

23 (b) “Cost” as applied to a project or portion thereof financed
24 under this division means all or part of the cost of construction
25 and acquisition of all lands, structures, real or personal property
26 or an interest therein, rights, rights-of-way, franchises, easements,
27 and interests acquired or used for a project; the cost of demolishing
28 or removing any buildings or structures on land so acquired,
29 including the cost of acquiring any lands to which those buildings
30 or structures may be moved; the cost of all machinery, equipment,
31 and furnishings, financing charges, interest prior to, during, and
32 for a period after, completion of construction as determined by the
33 authority; the cost of the purchase or sale of energy derived from
34 an alternative source pursuant to subdivision (g) of Section 26011;
35 provisions for working capital; reserves for principal and interest
36 and for extensions, enlargements, additions, replacements,
37 renovations, and improvements; the cost of architectural,
38 engineering, financial, accounting, auditing and legal services,

1 plans, specifications, estimates, administrative expenses, and other
2 expenses necessary or incident to determining the feasibility of
3 constructing any project or incident to the construction, acquisition,
4 or financing of a project.

5 (c) (1) “Alternative sources” means the application of
6 cogeneration technology, as defined in Section 25134; the
7 conservation of energy; or the use of solar, biomass, wind,
8 geothermal, hydroelectricity under 30 megawatts and meeting the
9 criteria set forth in paragraph (2) of subdivision (e) of Section
10 15351 of the Government Code, or any other source of energy,
11 the efficient use of which will reduce the use of fossil and nuclear
12 fuels, *and is intended primarily to offset part or all of the*
13 *customer’s own electrical requirements.*

14 (2) “Alternative sources” does not include a hydroelectric facility
15 that does not meet state laws pertaining to the control,
16 appropriation, use, and distribution of water, including, but not
17 limited to, the obtaining of applicable licenses and permits.

18 (d) “Advanced transportation technologies” means emerging
19 commercially competitive transportation-related technologies
20 identified by the authority as capable of creating long-term, high
21 value-added jobs for Californians while enhancing the state’s
22 commitment to energy conservation, pollution reduction, and
23 transportation efficiency. Those technologies may include, but are
24 not limited to, any of the following:

25 (1) Intelligent vehicle highway systems.

26 (2) Advanced telecommunications for transportation.

27 (3) Command, control, and communications for public transit
28 vehicles and systems.

29 (4) Electric vehicles and ultralow emission vehicles.

30 (5) High-speed rail and magnetic levitation passenger systems.

31 (6) Fuel cells.

32 (e) “Financial assistance” includes, but is not limited to, either,
33 or any combination, of the following:

34 (1) Loans, loan loss reserves, interest rate reductions, proceeds
35 of bonds issued by the authority, insurance, guarantees or other
36 credit enhancements or liquidity facilities, contributions of money,
37 property, labor, or other items of value, or any combination thereof,
38 as determined by, and approved by the resolution of, the board.

39 (2) Any other type of assistance the authority determines is
40 appropriate.

1 (f) “Participating party” means either of the following:

2 (1) A person or an entity or group of entities engaged in business
3 or operations in the state, whether organized for profit or not for
4 profit, that does either of the following:

5 (A) Applies for financial assistance from the authority for the
6 purpose of implementing a project in a manner prescribed by the
7 authority.

8 (B) Participates in the purchase or sale of energy derived from
9 an alternative source pursuant to subdivision (g) of Section 26011.

10 (2) A public agency or nonprofit corporation that does either of
11 the following:

12 (A) Applies for financial assistance from the authority for the
13 purpose of implementing a project in a manner prescribed by the
14 authority.

15 (B) Participates in the purchase or sale of energy derived from
16 an alternative source pursuant to subdivision (g) of Section 26011.

17 (g) “Project” means a land, building, improvement to the land
18 or building, rehabilitation, work, property, or structure, real or
19 personal, stationary or mobile, including, but not limited to,
20 machinery and equipment, whether or not in existence or under
21 construction, that utilizes, or is designed to utilize, an alternative
22 source, or that is utilized for the design, technology transfer,
23 manufacture, production, assembly, distribution, or service of
24 advanced transportation technologies, or an arrangement for the
25 purchase, including prepayment, or sale of energy derived from
26 an alternative source pursuant to subdivision (g) of Section 26011.

27 (h) “Public agency” means a federal or state agency, department,
28 board, authority, state or community college, university, or
29 commission, or a county, city and county, city, regional agency,
30 public district, school district, or other political entity.

31 (i) (1) “Renewable energy” means a device or technology that
32 conserves or produces heat, processes heat, space heating, water
33 heating, steam, space cooling, refrigeration, mechanical energy,
34 electricity, or energy in any form convertible to these uses, that
35 does not expend or use conventional energy fuels, and that uses
36 any of the following electrical generation technologies:

37 (A) Biomass.

38 (B) Solar thermal.

39 (C) Photovoltaic.

40 (D) Wind.

1 (E) Geothermal.

2 (2) For purposes of this subdivision, “conventional energy fuel”
3 means any fuel derived from petroleum deposits, including, but
4 not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,
5 including liquefied natural gas, or nuclear fissionable materials.

6 (3) Notwithstanding paragraph (1), for purposes of this section,
7 “renewable energy” also means ultralow emission equipment for
8 energy generation based on thermal energy systems such as natural
9 gas turbines and fuel cells.

10 (j) “Revenue” means all rents, receipts, purchase payments,
11 loan repayments, and all other income or receipts derived by the
12 authority from a project, or the sale, lease, or other disposition of
13 alternative source or advanced transportation technology facilities,
14 or the making of loans to finance alternative source or advanced
15 transportation technology facilities, and any income or revenue
16 derived from the investment of money in any fund or account of
17 the authority.

18 ~~SEC. 2.~~

19 *SEC. 3.* Section 26011 of the Public Resources Code is
20 amended to read:

21 26011. The authority is authorized and empowered:

22 (a) To adopt an official seal.

23 (b) To sue and be sued in its own name.

24 (c) To issue bonds, notes, bond anticipation notes, and other
25 obligations of the authority, including, at the option of the
26 authority, obligations bearing interest that is taxable for purposes
27 of federal income taxation, for any of its purposes and to fund or
28 refund the same, all as provided in this division.

29 (d) To determine the location and character of a project to be
30 financed under the provisions of this division, to lend financial
31 assistance to a participating party, to enter into loan agreements
32 with a participating party for the financing of a project including
33 creating a lien or security interest in the property, to construct,
34 reconstruct, renovate, replace, lease, as lessor or lessee, and
35 regulate the same, and to enter into contracts for the sale of a
36 project, including installment sales or sales under conditional sales
37 contracts.

38 (e) To fix fees and charges for projects, and interest rates with
39 respect to loans for projects, and to revise from time to time the
40 fees and charges and interest rates, and to collect rates, rents, fees,

1 and charges for the use of, and for a facility or service furnished,
2 or to be furnished, by a project or part *of* the project and to contract
3 with a person, partnership, association, corporation, or public
4 agency with respect to the project, and to fix the terms and
5 conditions upon which a project may be sold or disposed of,
6 whether upon installment sales contracts or otherwise.

7 (f) To employ and fix the compensation of bond counsel,
8 financial consultants, and advisers as may be necessary in its
9 judgment in connection with the issuance and sale of any bonds,
10 notes, bond anticipation notes, or other obligations of the authority;
11 to contract for engineering, architectural, accounting, or other
12 services of appropriate state agencies as may be necessary in the
13 judgment of the authority for the successful development of a
14 project; and to pay the reasonable costs of consulting engineers,
15 architects, accountants, and construction experts employed by a
16 participating party if, in the judgment of the authority, the services
17 are necessary to the successful development of a project, and the
18 services are not obtainable from a state agency.

19 (g) To purchase alternative source energy or projects from a
20 person or entity for sale to a participating party, or to make a loan
21 to a participating party to purchase alternative source energy or
22 projects, or to purchase from a person or entity that has contracted
23 to sell alternative source energy to a participating party the right
24 to receive purchase payments and related rights under that contract
25 or any related contracts. Notwithstanding any other applicable law,
26 the authority and a public agency, for purposes of a program or
27 financing, shall have the power to enter into ~~such~~ contractual
28 arrangements and related agreements or instruments, including,
29 without limitation, a prepayment purchase contract, lease, loan,
30 construction, security, operation and maintenance, or other
31 agreement or instrument, with the authority or with a participating
32 party, upon ~~such~~ *the* terms and subject to ~~such~~ *the* conditions ~~as~~
33 *that* may be necessary or convenient to accomplish the purposes
34 of this subdivision.

35 (h) To do all things generally necessary or convenient to carry
36 out the purposes of this division.

37 ~~SEC. 3.~~

38 *SEC. 4.* Section 26011.6 of the Public Resources Code is
39 amended to read:

1 26011.6. (a) The authority shall establish a renewable energy
2 program to provide financial assistance to public power entities,
3 independent generators, utilities, or businesses manufacturing
4 components or systems, or both, to generate new and renewable
5 energy sources, develop clean and efficient distributed generation,
6 and demonstrate the economic feasibility of new technologies,
7 such as solar, photovoltaic, wind, and ultralow emission equipment.
8 The authority shall give preference to utility-scale projects that
9 can be rapidly deployed to provide a significant contribution as a
10 renewable energy supply. The program established pursuant to
11 this subdivision shall include financial assistance provided pursuant
12 to subdivision (g) of Section 26011.

13 (b) The authority shall make every effort to expedite the
14 operation of renewable energy systems, and shall adopt regulations
15 for purposes of this section and Section 26011.5 as emergency
16 regulations in accordance with Chapter 3.5 (commencing with
17 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
18 Code. For purposes of that Chapter 3.5, including Section 11349.6
19 of the Government Code, the adoption of the regulations shall be
20 considered by the Office of Administrative Law to be necessary
21 for the immediate preservation of the public peace, health and
22 safety, and general welfare. Notwithstanding the 120-day limitation
23 specified in subdivision (e) of Section 11346.1 of the Government
24 Code, the regulations shall be repealed 180 days after their effective
25 date, unless the authority complies with Sections 11346.2 to
26 11347.3, inclusive, as provided in subdivision (e) of Section
27 11346.1 of the Government Code.

28 (c) The authority shall consult with the State Energy Resources
29 Conservation and Development Commission regarding the
30 financing of projects to avoid duplication of other renewable energy
31 projects.

32 (d) The authority shall ensure that any financed project shall
33 offer its power within California on a long-term contract basis.

34 (e) *The authority shall ensure that a financed project is limited*
35 *to resources that the authority determines support the state's goals*
36 *for the reduction of emissions of greenhouse gases pursuant to the*
37 *California Global Warming Solutions Act of 2006 (Division 25.5*
38 *(commencing with Section 38500) of the Health and Safety Code).*

1 ~~SEC. 4.~~

2 *SEC. 5.* Section 26022 of the Public Resources Code is
3 amended to read:

4 26022. (a) The authority is authorized from time to time to
5 issue its negotiable bonds, notes, debentures, or other securities
6 (hereinafter collectively called “bonds”) for any of its purposes.
7 The bonds may be authorized, without limiting the generality of
8 the foregoing, to finance a single project for a single participating
9 party, a series of projects for a single participating party, a single
10 project for several participating parties, or several projects for
11 several participating parties, or the purchase and sale of alternative
12 source energy or projects pursuant to subdivision (g) of Section
13 26011. In anticipation of the sale of bonds as authorized by Section
14 26020, or as may be authorized pursuant to Section 26021, the
15 authority may issue negotiable bond anticipation notes and may
16 renew the notes from time to time. The bond anticipation notes
17 may be paid from the proceeds of sale of the bonds of the authority
18 in anticipation of which they were issued. Notes and agreements
19 relating to the notes and bond anticipation notes, collectively called
20 notes, and the resolution or resolutions authorizing the notes may
21 contain any provisions, conditions or limitations ~~which~~ *that* a bond,
22 agreement relating to the bond, and bond resolution of the authority
23 may contain. However, a note or renewal of the note shall mature
24 at a time not exceeding two years from the date of issue of the
25 original note.

26 (b) Except as may otherwise be expressly provided by the
27 authority, every issue of its bonds, notes, or other obligations shall
28 be general obligations of the authority payable from any revenues
29 or moneys of the authority available for these purposes and not
30 otherwise pledged, subject only to any agreements with the holders
31 of particular bonds, notes, or other obligations pledging any
32 particular revenues or moneys and subject to any agreements with
33 any participating party. Notwithstanding that the bonds, notes, or
34 other obligations may be payable from a special fund, they are for
35 all purposes negotiable instruments, subject only to the provisions
36 of the bonds, notes, or other obligations for registration.

37 (c) Subject to the limitations in Sections 26020 and 26021, the
38 bonds may be issued as serial bonds or as term bonds, or the
39 authority, in its discretion, may issue bonds of both types. The
40 bonds shall be authorized by resolution of the authority and shall

bear the date or dates, mature at the time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to terms of redemption, as the resolution or resolutions may provide. The bonds or notes shall be sold by the Treasurer within 60 days of receipt of a certified copy of the authority's resolution authorizing the sale of the bonds. However, the authority, at its discretion, may adopt a resolution extending the 60-day period. The sales may be a public or private sale, and for the price or prices and on the terms and conditions, as the authority shall determine after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes. Pending preparation of the definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds ~~which~~ *that* shall be exchanged for the definitive bonds. The Treasurer may sell ~~any~~ bonds, notes, or other evidence of indebtedness at a price below their par value. However, the discount on a security ~~pursuant to this section sold~~ *sold pursuant to this section* shall not exceed 6 percent of the par value.

(d) A resolution or resolutions authorizing bonds or an issue of bonds may contain provisions that shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the full faith and credit of the authority or pledging all or part of the revenues of a project or a revenue-producing contract or contracts made by the authority with an individual, partnership, corporation, or association or other body, public or private, or other moneys of the authority, to secure the payment of the bonds or of any particular issue of bonds, subject to the agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year by the charges, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition of the reserves or sinking funds.

1 (4) Limitations on the right of the authority or its agent to restrict
2 and regulate the use of the project or projects to be financed out
3 of the proceeds of the bonds or any particular issue of bonds.

4 (5) Limitations on the purpose to which the proceeds of sale of
5 an issue of bonds then or thereafter to be issued may be applied
6 and pledging those proceeds to secure the payment of the bonds
7 or the issue of the bonds.

8 (6) Limitations on the issuance of additional bonds, the terms
9 upon which additional bonds may be issued and secured, and the
10 refunding of outstanding bonds.

11 (7) The procedure, if any, by which the terms of a contract with
12 bondholders may be amended or abrogated, the amount of bonds
13 the holders of which must consent to the amendment or abrogation,
14 and the manner in which that consent may be given.

15 (8) Limitations on expenditures for operating, administrative,
16 or other expenses of the authority.

17 (9) Defining the acts or omissions to act ~~which~~ *that* constitute
18 a default in the duties of the authority to holders of its obligations
19 and providing the rights and remedies of the holders in the event
20 of a default.

21 (10) The mortgaging of a project and the site of the project for
22 the purpose of securing the bondholders.

23 (11) The mortgaging of land, improvements, or other assets
24 owned by a participating party for the purpose of securing the
25 bondholders.

26 (12) Procedures for the selection of projects to be financed with
27 the proceeds of the bonds authorized by the resolution, if the bonds
28 are to be sold in advance of the designation of the projects and
29 participating parties to receive the financing.

30 (e) Neither the members of the authority nor a person executing
31 the bonds or notes shall be liable personally on the bonds or notes
32 or be subject to personal liability or accountability by reason of
33 the issuance of the bond or note.

34 (f) The authority shall have power out of any funds available
35 for these purposes to purchase its bonds or notes. The authority
36 may hold, pledge, cancel, or resell those bonds, subject to and in
37 accordance with agreements with bondholders.